PEOPLE'S TOBACCO COMPANY, LIMITED, *v.* AMERICAN TOBACCO COMPANY.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

No. 124. Argued January 4, 7, 1918.—Decided March 4, 1918.

As applied to a corporation defendant, the provision of the Sherman Act of 1890, § 7, allowing actions for treble damages to be brought in the district in which the defendant "resides or is found," means that the corporation must be present in the district, by its officers or agents, carrying on its business.

Upon consideration of the evidence, *held*, that the defendant corporation of New Jersey undertook in good faith to carry out a decree of dissolution made by the Circuit Court in New York, and to divest itself of a former branch business in Louisiana; and that subsequent service of process, upon the former manager of that business, in Louisiana, was ineffectual to bind the corporation.

Defendant's revocation of its designation of a former manager of its

domiciled in the State, and did not have the right or authority to make sales on account of the defendant company, collect money, or extend credit for it. It also appears that the American Tobacco Company owned stock in other companies which owned stock in companies carrying on the tobacco business in the State of Louisiana. With these facts in mind we come to a consideration of the proper disposition of the case.

We agree with the District Court that Irby at the time of the attempted service upon him was not the authorized agent of the American Tobacco Company. On December 1, 1911, the American Tobacco Company conveyed its Irby Branch to the Liggett and Myers Tobacco Company. On the same day W. R. Irby, who had been the designated agent of the defendant company, resigned as a director of the American Tobacco Company, and ceased to remain in its employment. On December 15, 1911, the power of attorney was revoked, as we have hereinbefore stated, by the company filing an instrument of revocation in the office of the Secretary of State of Louisiana; it is true that the revocation was by one of the vice presidents of the company and was attested by the seal of the corporation. But we are not impressed with the argument that this revocation was ineffectual because not sanctioned by formal action of the board of directors of the company. The vice president seems to have had authority in the matter. Apparently he acted with the knowledge and acquiescence of the corporation, and was carrying into effect the decree of dissolution.

Upon the broader question, we agree with the District Court that the American Tobacco Company at the time of the attempted service was not doing business within the State of Louisiana. The question as to what constitutes the doing of business in such wise as to make the corporation subject to service of process has been frequently discussed in the opinions of this court, and we

shall enter upon no amplification of what has been said. Each case depends upon its own facts. The general rule deducible from all our decisions is that the business must be of such nature and character as to warrant the inference that the corporation has subjected itself to the local jurisdiction, and is by its duly authorized officers or agents present within the State or district where service is attempted. *Philadelphia & Reading Ry. Co.* v. *McKibbin*, 243 U. S. 264; *St. Louis Southwestern Ry. Co.* v. *Alexander*, 227 U. S. 218, 226.

The fact that the company owned stock in the local subsidiary companies did not bring it into the State in the sense of transacting its own business there. *Peterson* v. *Chicago, Rock Island & Pacific Ry. Co.*, 205 U. S. 364; *Philadelphia & Reading Co.* v. *McKibbin*, 243 U. S. 264, 268. As to the continued practice of advertising its wares in Louisiana, and sending its soliciting agents into that State, as above detailed, the agents having no authority beyond solicitation, we think the previous decisions of this court have settled the law to be that such practices did not amount to that doing of business which subjects the corporation to the local jurisdiction for the purpose of service of process upon it. *Green* v. *Chicago, Burlington & Quincy Ry. Co.*, 205 U. S. 530; *Philadelphia & Reading Ry. Co.* v. *McKibbin*, 243 U. S. 264, 268.

The plaintiff in error relies upon *International Harvester Co.* v. *Kentucky*, 234 U. S. 579, but in that case the facts disclosed that there was not only a continuous course of business in the solicitation of orders within the State, but there was also authority upon the part of such agents to receive payment in money, checks and drafts on behalf of the company, and to take notes payable and collectible at banks in Kentucky; these things, taken together, we held amounted to doing business within the State of Kentucky in such manner as to make the Har-

vester Company amenable to the process of the courts of that State.

As to the attempted service of process upon the Secretary of State of Louisiana under the Louisiana Act of 1904 [Laws 1904, Act No. 54, p. 133], as amended 1908, [Laws 1908, Act No. 284, p. 423], we understand the act, as construed by the State Supreme Court, is not applicable to foreign corporations not present within the State and doing business therein at the time of the service, and having as in this case withdrawn from the State and ceased to do business there. *Gouner* v. *Missouri Valley Bridge & Iron Co.*, 123 Louisiana, 964.

We reach the conclusion that the District Court did not err in maintaining the exceptions filed by the defendant company and in quashing the attempted service made upon it.

Judgment affirmed.

MR. JUSTICE MCREYNOLDS took no part in the consideration or decision of this case.